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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Sacramento)

In re A.P. et al., Persons Coming Under the Juvenile
Court Law.

C088120

SACRAMENTO COUNTY DEPARTMENT OF
CHILD, FAMILY AND ADULT SERVICES,

(Super. Ct. No. JD238758,
JD238759)

Plaintiff and Respondent,

v.

L.S.,

Defendant and Appellant.

L.S., mother of the minors, A.P. and A.S. (minors), appeals from the juvenile court's visitation orders issued after the court terminated dependency and awarded sole physical custody to A.C. (father) and joint legal custody to mother and father. (Welf. & Inst. Code, §§ 300, 362.4, 395.)¹

¹ Undesignated statutory references are to the Welfare and Institutions Code.

We shall affirm the order terminating dependency jurisdiction and remand with directions to the juvenile court to clarify and modify its visitation order.

I. BACKGROUND

A detailed recitation of the underlying facts is unnecessary for the determination of this appeal. We summarize the procedural background as follows:

Original section 300 dependency petitions were filed by the Sacramento Department of Child, Family, and Adult Services (Department) on January 25, 2018, as to minors A.P. (then eight years old) and A.S. (then four years old). The petitions alleged mother failed to protect the minors from physical abuse by their adult sibling, Ar.S., and Ar.S.'s roommate, including punching the minors and hitting them with a belt and an extension cord, about which mother knew or should have known. (§ 300, subd. (b).) The petition also alleged mother failed to protect the minors from sexual abuse by their half-brother, S.A., beginning in 2012, which included S.A. touching the minors' private areas, forcing A.P. to touch S.A.'s bottom, forcing A.P. to put his mouth on S.A.'s penis and to anally penetrate S.A., all of which mother knew or should have known. It was also alleged that mother continued to allow S.A. to have unsupervised contact with the minors despite having agreed to a safety plan prohibiting such contact. (§ 300, subd. (d).) The minors were placed in protective custody pursuant to a protective custody warrant.

On January 29, 2018, the juvenile court ordered the minors detained. A.C. was found to be the presumed father for A.P. The court subsequently found paternity test results demonstrated A.C. was the biological father of A.S.

The contested jurisdictional/dispositional hearing commenced on June 20, 2018. On September 26, 2018, the court sustained the dependency petitions and adjudged the minors dependents of the juvenile court. The court then terminated dependency jurisdiction, awarded sole physical custody of the minors to father and joint legal custody to mother and father, and ordered supervised visitation for mother.

The court's oral pronouncement included the following statements regarding visitation: "As I understand the findings and orders, they state one time per week on Sundays. The Court will order the visitation supervised by a third party. The mother shall pay for that supervision. If the parties can agree—if the mother and father can agree on a supervisor, that does not have to be paid. So somebody who's voluntary to do that, they certainly can decide on that. The Court will leave the issue of who the supervisor is in the hands of the father; however, the Court is requiring that the visitation be supervised." The court adopted the findings and orders regarding jurisdiction as recommended by the Department in its February 28, 2018, report and, referring to the September 19, 2018, report's dispositional findings, stated as follows: "The Court is imposing the visitation schedule of once a week on Sunday for four hours. And the visitation at page 15 states that the visitation shall be supervised. And I'm changing on page 15, line 6, it says, 'The visit shall be supervised by third party.' And I'm changing on line six and a half the word 'parents' to the 'father.' So the father is to determine who the supervisor of those visits are [*sic*]."

The court's written order regarding visitation was memorialized by way of the recommended findings and orders set forth on pages 14 and 15 of the Department's September 19, 2018, report, as modified by the court via interlineation. In that regard, the order stated as follows: "Supervised visitation shall occur once a week, on Sunday, for 4 hours," mother "shall have supervised visitation with the children according to the schedule: [¶] to be determined by the parents," and "[t]he visits shall be supervised by (*name*): 3rd party; to be determined by the father. If the parents are unable to agree on a 3rd party to supervise the visits, an agency will [be] utilized and the mother shall bear all costs."

Mother filed a timely notice of appeal.

II. DISCUSSION

Mother contends the court's written visitation order is internally inconsistent with the court's oral visitation order and must therefore be reversed and remanded for clarification and amendment to conform to the oral order. The Department argues any variances between the clerk's transcript and the reporter's transcript should be harmonized whenever possible and, in any event, the court's order is clear and proper as to the right to and frequency of visitation and as to designation of a visitation supervisor. In the alternative, the Department argues that if we determine the court's order is confusing or inconsistent, the matter should be affirmed but remanded to the juvenile court for clarification or correction.

As we explain, the portion of the written order regarding *the schedule* for mother's supervised visitation is, with the exception of a minor clerical error, consistent with the court's oral pronouncement and clear in its intent. The remaining portion of the written order regarding *designation of the visitation supervisor* is confusing and internally inconsistent and must be remanded for further clarification by the juvenile court.

Where, as here, a juvenile court terminates dependency jurisdiction, section 362.4 authorizes the court to issue visitation orders. (See § 362.4, subd. (a); *In re Chantal S.* (1996) 13 Cal.4th 196, 202-203; *In re Armando L.* (2016) 1 Cal.App.5th 606, 616.) “Where a juvenile court orders visitation, the court shall specify the frequency and duration of visits. [Citation.] The time, place, and manner of visitation may be left to the legal guardians, but the guardians shall not have discretion to decide whether visitation actually occurs. [Citations.]” (*In re Grace C.* (2010) 190 Cal.App.4th 1470, 1478; accord *In re M.R.* (2005) 132 Cal.App.4th 269, 274; *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1313-1314.)

The juvenile court has broad discretion in fashioning visitation orders, and its determination will not be disturbed on review absent a clear abuse of discretion. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

We address mother's claims in reverse order. First, we address mother's claim that the court's oral and written orders regarding *designation of a visitation supervisor* are inconsistent and confusing and must be remanded for clarification.

The court orally pronounced that visitation would be "supervised by a third party" and that "mother and father can agree on a [voluntary] supervisor," but that the court would "leave the issue of who the supervisor is in the hands of the father." The recommended findings and orders regarding visitation set forth in the September 19, 2018, report stated in part as follows: "The visits shall be supervised by (*name*): 3rd party; to be determined by the *parents*. If the parents are unable to agree on a 3rd party to supervise the visits, an agency will [be] utilized and the mother shall bear all costs." The court adopted those findings and orders, modified as follows: "The visits shall be supervised by (*name*): 3rd party; to be determined by *father*. If the parents are unable to agree on a 3rd party to supervise the visits, an agency will [be] utilized and the mother shall bear all costs." (Second italics added.) The resulting written order reflects the court's modification as stated.

Mother contends the oral order and the written order are unclear, and the written order is internally inconsistent, with regard to selection of a visitation supervisor. We agree. As mother correctly points out, the court orally pronounced that visitation would be supervised by a third party, to be paid for by mother, but that mother and father could agree on a voluntary unpaid supervisor. The court also stated it would "leave the issue of who the supervisor is in the hands of the father." It appears, from those statements, that the court intended that if the parents could not agree on a supervisor, the supervisor would ultimately be determined by father. However, the court's oral modification of the recommended visitation order and the resulting written visitation order both provide that the supervisor is "to be determined by the *father*" but, in the event "the *parents* are unable to agree" on a supervisor, "an agency will [be] utilized" and mother will bear all

costs. (Italics added.) It is unclear from these inconsistent statements whether father or the “agency” (presumably, the Department) is the ultimate decision-maker.

The Department argues variances between the reporter’s transcript and the clerk’s minute order should be harmonized whenever possible (see *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1136), and asserts that a reasonable interpretation of the written order is that the parents may utilize a third party to supervise visits if they can agree on someone to do so but, “in the event that they cannot agree on a visitation supervisor, father ultimately has the discretion to choose the visitation supervisor and it may be a paid agency.” While the Department’s translation is one reasonable interpretation of the written order, it is not the only reasonable interpretation and, more importantly, we cannot unequivocally conclude it is the interpretation the juvenile court intended. As such, we must remand the matter to the juvenile court to clarify its order regarding designation of a visitation supervisor. (See *In re A.C.* (2011) 197 Cal.App.4th 796, 799-800 [remand for correction of visitation exit order]; *In re Maribel T.* (2002) 96 Cal.App.4th 82, 86 [correction of written custody order]; *In re Korbin Z.* (2016) 3 Cal.App.5th 511, 520 [visitation order reversed and remanded for juvenile court to reconsider whether to order visitation].)

Next, we address mother’s claim that the written visitation order impermissibly delegated authority over the *visitation schedule* to father. In particular, she takes issue with the fact that the court’s oral and written orders both provide for visitation every Sunday for four hours, but the written order also states that mother shall have supervised visitation with the minors “according to the schedule: [¶] *to be determined by the parents*” (italics added) rather than “according to the schedule: [¶] set forth in visitation order above” (referring to the previously-stated schedule of weekly visits on Sunday for four hours).

We conclude the discrepancy about which mother complains is the result of a clerical error in which the wrong box was checked when setting forth the visitation

schedule. That is, the court’s oral and written orders made it abundantly clear, and the parties do not dispute, that mother’s supervised visitation would occur every Sunday for four hours as expressly stated. The reference to the visitation schedule “to be determined by the parents” was a clerical error. Due to the remand necessitated by confusion in the written order regarding designation of a visitation supervisor as discussed above, we will direct the juvenile court to remedy the clerical error by checking the appropriate box to correctly state the visitation schedule as “set forth in visitation order above.”

III. DISPOSITION

The order terminating dependency jurisdiction is affirmed. The matter is remanded to the juvenile court for the sole purpose of clarifying its visitation order regarding the manner of designation of a visitation supervisor and correcting the clerical error regarding the visitation schedule consistent with this opinion.

/S/

RENNER, J.

We concur:

/S/

MURRAY, Acting P. J.

/S/

HOCH, J.